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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.1541 of 2013
and
M.P.No.1 of 2013

The Tamil Nadu State Transport,
Corporation (Villupuram) Limited,
Rep. by its Managing Director,
Kancheepuram.

... Appellant

-vs-

1. The Presiding Officer,
Principal Labour Court,
Chennai.

2. Vijayakumar

... Respondents

Prayer: Writ appeal filed under Clause 15 of the Letters Patent praying to allow the Writ Appeal by setting aside the final order passed in W.P.No.37083 of 2005 dated 13.09.2012 as illegal.

Prayer in W.P.No.37083 of 2005:

Praying for issuance of a Writ of Certiorari, to call for the records of the 1st respondent in I.D.No.14 of 2000 dated 15.09.2004 and quash the same.

For Appellant : Mr.C.S.K.Sathish
TNSTC

For R1 : Court

For R2 : Mr.K.M.Ramesh



JUDGMENT

(Judgment of the Court was pronounced by T.RAJA.J)

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This Writ Appeal has been directed against the impugned order dated 13.09.2004 made in W.P.No.37083 of 2005 confirming the findings and the conclusions reached by the learned Principle Labour Court, Chennai, in its award dated 15.09.2004 passed in I.D.No.14 of 2000 wherein the 2nd respondent herein having raised an Industrial Dispute under Section 2-A of the Industrial Disputes Act, 1947, seeking reinstatement of his service with continuity of service with back wages and all other attendant benefits, succeeded on the ground that when the appellant Transport Corporation issued a Charge Memo dated 05.01.1997, that charge memo was wantonly and willfully sent to a false address so as to deny him fair and reasonable opportunity to take part in the enquiry to disprove the charges.

2.The learned Labour Court considering the case on both parties proceeded as follows:

'7. The case of the respondent is that the petitioner was absent for so many days. Letters were issued to the petitioner by R.P.A.D and notice of enquiry was also issued by R.P.A.D and all the letters were returned as 'no such addressee' and 'left' Ex.W.4 was marked through M.W.1, Ex.W.4 was admitted by M.W.1. So it is evident from the above that the petitioner was residing at 29-N/1, Thattamalai Street, Chengalpattu. But notice and letters were sent to some other address and that is evident from the documents marked on the side of the respondent. So, it is evident that no notice was served as per law. It is also evident that the respondent's management is wantonly and willfully sent the letters, charge an memo and other proceedings to a false address, which was not furnished by the petitioner. In this case no publication was made regarding the domestic enquiry. The petitioner was not given enough and sufficient opportunity to participated in the enquiry. The evidence adduced on the side of the respondent is not satisfactory and acceptable. For the reasons stated above I hold that the non-employment of the petitioner is not justified and the petitioner is entitled to the relief of reinstatement in service with backwages, continuity of service and all other attendant benefits. The point is answered



accordingly.

8. In the result, an award is passed holding that the non-employment of the petitioner is not justified and that the petitioner is entitled to the relief of reinstatement in service with backwages, continuity of service and all other attendant benefits. No costs.''

Aggrieved thereby, the appellant went before the learned Single Judge in W.P.No.37083 of 2005. The learned Single Judge seeing the conduct and approach of the appellant in not taking any fair approach in giving reasonable approach to hold enquiry in the manner known to law, rightly confirmed the award passed by the learned Labour Court. Aggrieved against the same, the present Writ Appeal has been filed.

3. Heard Mr.C.S.K.Sathish learned counsel appearing for the appellant and Mr.K.M.Ramesh learned counsel appearing for the 2nd respondent and perused the materials available on record.

4. Learned counsel appearing for the appellant stated that it is no doubt true that the charge memo dated 20.05.1995 was sent to the respondent by RPAD which was also returned with an endorsement ''left'', but subsequently for the reason being known to the Enquiry Officer, the enquiry was held holding that charges were proved and finally, another show cause notice dated 27.06.1995 was issued to the 2nd respondent by RPAD and that was also returned back by the Postal Department. However, this was displayed on the notice board in the depot. Therefore, it could be presumed that the notice has been properly served. This argument can never be appreciated by this Court for the simple reason that when the charge memo dated 05.01.1995 was issued while sending notice of enquiry, it is a strict responsible, obligation and liability, if we may say so, on the part of the Transport Department including the enquiry officer to ensure that the notice of enquiry has been properly served on the delinquent employee which has not been taken care of. As this issue has been repeatedly gone into by both the learned labour Court in its award dated 15.09.2004 and also by the learned Single Judge in his order dated 15.09.2004, holding that no reasonable opportunity was fairly given to the second respondent. we are unable to find any error whatsoever in the impugned order. The reason being that when the second respondent was issued with a charge memo without holding enquiry giving fair opportunity to explain his position, the approach of the appellant holding him guilty is unknown to law. Therefore, this Writ Appeal is liable to be dismissed.

In the result, the Writ Appeal fails and the same is



accordingly dismissed thereby confirming the order of the learned Single Judge dated dated 13.09.2012 made in W.P.No.37083 of 2005. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsn

To

The Presiding Officer,
Prinicipal Labour Court,
Chennai.

+1cc to Mr.C.S.K.Sathish, Standing counsel for TNSTC, S.R.No.28867
+1cc to Mr.K.M.Ramesh, Advocate, S.R.No.28635

W.A.No.1541 of 2013
and
M.P.No.1 of 2013

RSV(CO)
SU(26/07/2021)